

Remarks.

Applicant has amended the Abstract of the disclosure to remove the objection thereto. Applicant has amended the specification to include reference to “apexes” of the ridges, as supported in the original claim 1. Applicant has also amended claims 8, 13, 19 and 24 to remove the objections thereto by Examiner. Independent claims 1, 13 and 19 to included limitations not taught by the prior art. Such amendments are consistent with the specification and supported by the depended claims of the instant invention.

Response to Claims Rejections.

Rejection of Claims 1-3, 8-11, 13, 14, 17-22 and 24 under 35 U.S.C. §102 as being anticipated by Drossbach.

Applicant respectfully traverses such rejection to the extent that such rejection applies to newly amended independent claims 1, 13 and 19.

Analysis of Drossbach (U.S. Patent No. 4,113,818).

Drossbach discloses a corrugated plastic drain pipe (tubing) having corrugations (ridges) and troughs (valleys) and a plurality of perforations. Drossbach teaches a method of imparting the perforations to the pipe. Drossbach does not disclose any physical parameters about the height of the corrugations or the distance between the corrugations. Drossbach does not disclose any need for selecting the height of the ridge and the distance between adjacent corrugations based on any uses of the drain pipe.

Rejection of Claims 1, 13 and 19.

Drossbach discloses a corrugated plastic drain pipe with a plurality of perforations in the troughs between the corrugations. It is anticipated that the drain pipe be buried, and not used for any other purpose. There is no discussion in Drossbach as to the physical dimensions of the corrugations and troughs. There is no discussion in Drossbach of the corrugations having a selected height. There is no discussion in Drossbach of a necessity for there to be a selected distance between apexes of the adjacent corrugations. There is no disclosure in Drossbach of the selection of the height of the corrugations and the distance between adjacent apexes based on the characteristics of flexibility and curvature of a collapsible structure. These limitations of claims 1, 13 and 19 of the instant invention cannot be inherent in Drossbach. Under the doctrine of inherency, “[a]nticipation of inventions set forth in product claims cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references.” *In re Felton*, 484 R.2d 495, 500, 179 USPQ 295, 298 (CCPA 1973). Under the Doctrine of Inherency, inherency does not mean that a thing might happen, the desired result **must inevitably happen** for the doctrine to apply. *Kropa v. Robie and Mahlman*, 88 U.S.P.Q. 478 (C.C.P.A. 1951). (Emphasis added.) Therefore, under the doctrine of inherency, every corrugated drain pipe of Drossbach would have to be constructed with of the selection of the height of the corrugations and the distance between adjacent apexes based on the characteristics of flexibility and curvature of a collapsible structure. Such is patently

unreasonable.

Rejection of Claims 2-3, 8-11, 14, 17-18, 20-22 and 24 under 35 U.S.C. §102 as being anticipated by Drossbach.

Applicant considers claims 2-3, 8-11, 14, 17-18, 20-22 and 24 to be allowable on their own merits, however claims 2-3 and 8-11 are dependent upon newly amended independent claim 1, claims 14 and 17-18 are dependent upon newly amended independent claim 13, and claims 20-22 and 24 are dependent upon newly amended independent claim 19, which independent claims are believed not to be anticipated by Drossbach. Therefore, such dependent claims cannot be anticipated by Drossbach.

Rejection of claims 19-22 and 24 under 35 U.S.C. 102(b) as being anticipated by Arai.

Applicant respectfully traverses such rejection to the extent that such rejection applies to newly amended independent claim 19.

Analysis of Arai (U.S. Patent No. 5,263,520).

Arai disclosed an apparatus for removing air from a plastic bag. The apparatus of Arai is comprised of two concentric stainless steel tubes affixed to a hub member at one end and a plug at the distal end. The outer tube has a plurality of perforations, and the inner tube has at least one perforation. The hub member is adapted to be fitted to a standard suction hose, as from a vacuum cleaner. Arai does not disclose, either expressly or inherently, valleys between two adjacent ridges or corrugations. Therefore, Arai cannot disclose perforations between two adjacent ridges or corrugations.

Rejection of claims 19.

Arai could not and cannot anticipate claim 19, either prior to or after amendment. The Examiner asserts:

“In regard to the method, the Arai reference discloses a "suction tube" 1 having "ridges" 2 and "valleys" 3 including "perforations" 5 and an "air suction hose" 13 connected to a vacuum pump, as claimed.”

Applicant respectfully traverses such statement. Element 2 of Arai is the stainless steel outer tube, defined by Arai thusly:

“The hub member 1 holds an outer tube 2 air-tightly at one end thereof. The outer tube 2 is made preferably from stainless steel in consideration of the corrosion resistance... .” (Col. 2, lines 41-43)

Tube 2 is shown to be smooth surfaced, without having any ridges. What the Examiner has asserted as “valleys” 3 is defined by Arai, at col. 2, lines 57-59:

“As is shown in Fig. 1, the outer tube 2 has a plurality of perforations 3 distributed along the axial length of the tube 2.”

The elements asserted by the Examiner as “perforations” 5 are just that, only situated in inner tube 4, coaxial to outer tube 2. Neither outer tube 2 nor inner tube 4 has ridges as described and claimed in the instant invention. Arai does not disclose, either expressly or inherently,

perforations between two adjacent ridges or corrugations. The only overt description of a corrugated tube in Arai occurs in Fig. 3, identified as air-suction hose 13. The only description of air-suction hose 13 is,

“The opening 1a of the hub member 1 is connected to an air-suction hose 13 coming from a vacuum pump or vacuum cleaner (not shown in the figure).”
(Col. 4, lines 15-18)

It is common knowledge that air-suction hoses for vacuum pumps and vacuum cleaners do not have perforations. Therefore, Arai cannot anticipate claim 19. To the extent that the Examiner asserts that Arai discloses valleys between adjacent ridges then the Examiner is respectfully requested to cite the figure, column and lines describing such. Surely the perforations 3 cannot function as both the valleys and perforations of the current invention. If tube 2 were considered the ridge, then there would be no valleys.

Rejection of claims 20-22 and 24

Applicant considers claims 20-22 and 24 to be allowable on their own merits, however, claims 20-22 and 24 are dependent on newly amended claim 19, and since claim 19 is now deemed to be in consideration for allowance, claims 20-22 and 24 are deemed to be in condition for allowance.

Rejection of claims 12 and 23 under 35 U.S.C. 103(a) as being unpatentable over Drossbach and Arai, respectively.

Applicant considers claims 12 and 23 to be allowable on their own merits, however, claims 12 and 23 are dependent on newly amended claims 1 and 19 respectively, and since claims 1 and 19 are now deemed to be in consideration for allowance, claims 12 and 23 are deemed to be in condition for allowance.

Allowable Subject Matter.

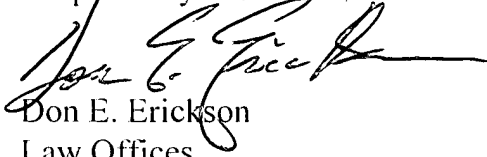
The Examiner has stated that claims 4-7, 15, 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicant considers that newly amended, independent claims 1 and 13 are now in condition for allowance, and therefore, all pending claims are now in condition for allowance.

Conclusion.

Applicant has amended the Abstract to comply with the Examiner basis for objection. Applicant has amended the Specification to include in the description of the invention the “apexes” disclosed in the claims. The Applicant has also amended the claims to include limitations not disclosed in the prior art. Applicant has also shown that newly amended, independent claims 1, 13, and 19 are not anticipated by either Drossbach. Applicant has also shown that claim 19 cannot be anticipated by Alai. Claims 4-7, 15 and 16 were objected to, but Applicant considers the basis for objection to be overcome.

Applicant believes that all pending claims of the application are in condition for allowance. Reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,



Don E. Erickson
Law Offices

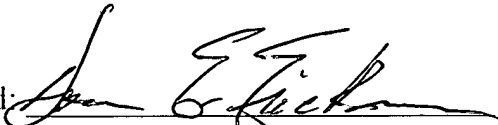
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Dated: December 16, 2004

Certificate of Service

I hereby certify that this **Amendment and Response** is being deposited with the United States Postal Service, first class mail, postage prepaid on the date indicated above and is addressed to "Commissioner for Patents; P.O. Box 1450; Alexandria, VA 22313-1450."

Signed: 
Representative: Don E. Erickson

Date of Signature: December 16, 2004